31.205-33 Professional and consultant service costs.

(a) *Definition.* "Professional and consultant services," as used in this subsection, means those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

(b) *Costs* of professional and consultant services are allowable subject to this paragraph and paragraphs (c) through (f) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the *costs* from the Government (but see 31.205-30 and 31.205-47).

(c) *Costs* of professional and consultant services performed under any of the following circumstances are unallowable:

(1) Services to improperly obtain, distribute, or use information or data protected by law or regulation (*e.g.,* 52.215-1(e), Restriction on Disclosure and Use of Data).

(2) Services that are intended to improperly influence the contents of *solicitations*, the evaluation of *proposals* or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) In determining the allowability of *costs* (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the *contracting officer shall* consider the following factors, among others:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of *contracting* for the service, considering the contractor’s capability in the particular area.

(3) The past pattern of acquiring such services and their *costs*, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor’s business.

(5) Whether the proportion of Government work to the contractor’s total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by *contracting*.

(7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.

(8) Adequacy of the contractual agreement for the service (*e.g.,* description of the service, estimate of time required, rate of compensation, termination provisions).

(e) Retainer fees, to be allowable, *must* be supported by evidence that-

(1) The services covered by the retainer agreement are necessary and customary;

(2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);

(3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and

(4) The actual services performed are documented in accordance with paragraph (f) of this subsection.

(f) Fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished (see also 31.205-38(c)). However, retainer agreements generally are not based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation *shall* include-

(1) Details of all agreements (*e.g.,* work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;

(2) *Invoices* or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and

(3) Consultants' work *products* and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

Parent topic: 31.205 Selected costs.